

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

KENNETH CRAIN, Individually and For
Others Similarly Situated,

Plaintiff,

v.

BERGAILA & ASSOCIATES, INC.,

Defendants.

Case No. 4:20-cv-00008

COLLECTIVE ACTION PURSUANT
TO 29 U.S.C. § 216(b)

JURY TRIAL DEMANDED

**JOINT MOTION
TO STAY PROCEEDINGS & DEADLINES AND FOR EQUITABLE TOLLING**

Pursuant to Federal Rule of Civil Procedure 1 and the Court's equitable power to control its docket, Kenneth Crain (Crain), individually and on behalf of himself and those similarly situated, and Defendant Bergaila & Associates, Inc. (Bergaila) (together, the Parties) jointly move to stay all proceedings and deadlines in this case for 60 days to allow the Parties to work together in a good faith effort to resolve this case. The Parties also request the Court equitably toll the putative collective members' respective statutes of limitations from the date the Court grants the Parties' instant Motion through the expiration of the requested stay.

1. Within **21 days** of the Court entering an order granting this Motion, Bergaila shall provide to Crain's Counsel the number of putative collective members, their average rate of pay, and the number of workweeks putative collective members worked within the statutory period. The Parties stipulate that, given the current pandemic of COVID-19 and the preventions in place to prevent its spread, the Parties will work together to extend this proposed timetable in the event that resources necessary to collect this information are scarce or unavailable due to pressing business needs.

2. Within **14 days** after receiving the above-described class data, Crain will send a confidential settlement demand to Bergaila.

3. The Parties request the Court stay all proceedings and deadlines in this case other than those outlined herein. The Parties' proposed stay will conserve the Parties' resources and serve judicial economy while they work towards a potential resolution of this matter. *See* FED. R. CIV. P. 1 (indicating the rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding").

4. The Parties also request the Court stay the putative collective members' respective statutes of limitations pending the 60-day requested stay while the Parties engage in informal resolution discussions. Specifically, the Parties request the Court toll the putative collective members' statutes of limitations from the day the Court enters a stay through the expiration of the stay. *See Torabi v. Gonzales*, 165 F. App'x 326, 330 (5th Cir. 2006) (the doctrine of equitable tolling applies to cases brought under the FLSA because the doctrine of equitable tolling is "read into every federal statute of limitations.") (citing *Holmberg v. Ambrecht*, 327 U.S. 392, 397 (1946)); *see also Sandoz v. Cingular Wireless LLC*, 553 F.3d 913, 916–17 (5th Cir.2008) ("in a[n] FLSA collective action, the statute of limitations for a named plaintiff runs from the date that the plaintiff files the complaint, while the limitations period for an opt-in plaintiff runs from the opt-in date.") (citing *Atkins v. Gen. Motors Corp.*, 701 F.2d 1124, 1130 n.5 (5th Cir.1983)).

WHEREFORE, the Parties respectfully ask the Court to grant their Joint Motion, stay this case for 60 days to allow the Parties to attempt to informally resolve this matter in good faith, and to toll the putative collective members' respective statutes of limitation.

RESPECTFULLY SUBMITTED AND AGREED TO BY:

Dated: April 22, 2020

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**ATTORNEYS FOR PLAINTIFF
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Dated: April 22, 2020

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2020, I served the foregoing on all parties and/or their counsel of record via the Court's CM/ECF filing system in accordance with the Federal Rules of Civil Procedure.

/s/ Taylor A. Jones

Taylor A. Jones